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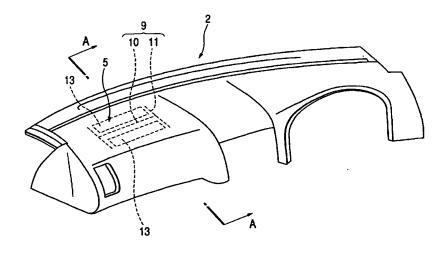
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(54) Vehicular air bag device

(57) In a vehicular air bag device which has a door member (13) that is disposed on the rear face of an air bag lid portion (5), and that is pressed by an inflation pressure of an air bag body to be swung via a hinge portion, thereby forming an inflation opening in the air

bag lid portion (5), a first hinge portion (30) and a second hinge portion (32) are disposed as the hinge portion. The second hinge portion (32) is bent in a stage where the inflation pressure of the air bag body is lower than a predetermined value, to cause formation of the inflation opening to be started.

FIG. 1



Description

BACKGROUND OF THE INVENTION

1. Field of the Invention

[0001] The present invention relates to a vehicular air bag device which is to be disposed in a vehicle such as an automobile, and more particularly to a hinge structure of a door member.

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2. Description of the Related Art

[0002] A vehicle such as an automobile is provided with an air bag device as safety means for a collision of the vehicle. Such an air bag device operates in the following manner. When an impact force which is larger than a predetermined level is applied to the vehicle body by a collision of the vehicle, the air bad body which is housed in a folded condition in an interior part such as an instrument panel is inflated toward a passenger in a cabin by supplying a high-pressure gas from an inflator, to receive the passenger, thereby protecting the passenger from a secondary collision against the instrument panel or the like.

[0003] The air bag body is configured so as to, when inflated, press an air bag lid portion which is made of a resin, and which is formed in the instrument panel or the like, whereby a score groove which is previously formed in the rear face of the air bag lid portion is broken and a door piece is opened. As a result, an inflation opening is formed so that the air bag body can be inflated toward the passenger in the cabin.

[0004] In the air bag device, a door member made of a metal is disposed on the rear face side of the door piece, whereby conflicting functions of ensuring the strength which can withstand the pressing force exerted from the surface side of the single-layer or multi-layer resin-made air bag lid portion, and of ensuring the breaking at the score groove are enabled to be inconsistent with each other.

[0005] Recently, an air bag device having the following configuration is proposed. An inflator is designed so as to cope with both a conventional operation mode (in which the whole of a predetermined amount of gas is ejected by a single ejecting operation) and a multi-stage operation mode (in which a predetermined amount of gas is stepwise ejected by plural ejecting operations), and to be selectively set to the conventional operation mode or the multi-stage operation mode. In the proposed air bag device, however, a special hinge structure is required which can cope with both the conventional operation mode and the multi-stage operation mode of the inflator.

[0006] When the hinge portion is set to have a large flexural rigidity which can withstand a high inflation pressure of the air bad body in the conventional operation mode of the inflator, the hinge portion is hardly bent by

a low inflation pressure of the air bad body exerted by a first-stage gas ejection operation in the multi-stage operation mode of the inflator, thereby producing the possibility that a predetermined inflation opening cannot be satisfactorily formed in an air bag lid portion. By contrast, when the hinge portion is set to have a small flexural rigidity at which the hinge portion can be bent by a low inflation pressure of the air bad body exerted by a first-stage gas ejection operation in the multi-stage operation mode of the inflator, there arises the possibility that the hinge portion is broken by a high inflation pressure of the air bad body in the conventional operation mode of the inflator. As a result, hinge rotation of the door piece which is formed in the air bag lid portion may be satisfactorily conducted.

SUMMARY OF THE INVENTION

[0007] In view of the above discussed problem, it is an object of the invention to provide a vehicular air bag device provided with a simple hinge structure which can cope with both the conventional operation mode and the multi-stage operation mode of an inflator.

[0008] In order to achieve the above object, according to a first aspect of the invention, in a vehicular air bag device which has a door member that is disposed on a rear face of an air bag lid portion, and that is pressed by an inflation pressure of an air bag body to be swung via a hinge portion, thereby forming an inflation opening in the air bag lid portion, the hinge portion is configured by a first hinge portion, and a second hinge portion which is disposed on a door member open-end side of the first hinge portion, and the second hinge portion is bent in a stage where the inflation pressure of the air bag body is lower than a predetermined value, to cause formation of the inflation opening to be started.

[0009] According to the first aspect of the invention which is configured as described above, in the conventional operation mode of the inflator, the second hinge portion is bent in an initial stage in which the inflation pressure of the air bag body is lower than the predetermined value, and formation of the inflation opening in the air bag lid portion is started. When the inflation pressure of the air bag body then reaches a predetermined higher value, the first hinge portion in which the hinge axis is adjacent to the second hinge portion is bent, and the first and second hinge portions cooperate to form the predetermined inflation opening in the air bag lid portion without breaking the second hinge portion. By contrast, in the multi-stage operation mode of the inflator, the second hinge portion is bent by a low inflation pressure of the air bag body in a first gas ejection stage, and formation of the inflation opening in the air bag lid portion is started. Even when a low inflation pressure of the air bag body in the gas ejection of a second gas ejection stage is applied to the hinge, the first hinge portion is not substantially or completely bent, and a predetermined inflation opening is formed by only the second 15

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hinge portion. In this way, the simple hinge structure can cope with both the conventional operation mode and the multi-stage operation mode of the inflator.

[0010] A second aspect of the invention is characterized in that a recess which increases an axis-to-axis distance between hinge axes of the first and second hinge portions is formed in a basal area of the first hinge portion.

[0011] According to the second aspect of the invention which is configured as described above, the axisto-axis distance between hinge axes of the first and second hinge portions is increased by the recess which is formed in the basal area of the first hinge portion, thereby allowing a required flexural rigidity to be ensured in the first hinge portion by a simple structure.

[0012] A third aspect of the invention is characterized in that the first hinge portion is formed into a tapered shape which is inclined toward a side of a door member fixing end as moving from the second hinge portion in a lateral width direction of the door member.

[0013] According to the third aspect of the invention which is configured as described above, since the first hinge portion is formed into a tapered shape which is inclined toward the side of the door member fixing end as moving from the second hinge portion toward the outer side in the vehicle's width direction, it is possible to ensure the flexural rigidity of the first hinge portion by a part in the vehicle's width direction.

[0014] A fourth aspect of the invention is characterized in that a weakened portion is disposed in each of both sides of a door portion of the door member.

[0015] According to the fourth aspect of the invention which is configured as described above, since the weakened portion is disposed in both the sides of the door portion of the door member, the door portion is bent in the weakened portions disposed in both the side areas of the door portion when the center area of the door portion is pressed more strongly by the inflated air bag body than the side areas. Therefore, stress concentration in the second hinge portion which is in the center area of the door member is relaxed.

[0016] A fifth aspect of the invention is characterized in that the second hinge portion is disposed in each of a center area and both side areas of the door member. [0017] According to the fifth aspect of the invention which is configured as described above, the second hinge portion is disposed in each of the center area and both the side areas of the door member. Even when the center area of the door portion is pressed more strongly by the inflated air bag body than the side areas, therefore, the whole of the door portion is caused to perform hinge rotation by the second hinge portions disposed in both the side areas of the door member. As a result, it is possible to prevent stress from concentrating only in the second hinge portion in the center area of the door member.

BRIEF DESCRIPTION OF THE DRAWINGS

[0018]

Fig. 1 is a perspective view of an instrument panel in Embodiment 1 of the invention.

Fig. 2 is a section view taken along the line A-A in Fig. 1.

Fig. 3 is a perspective view of a door member of Fig.

Fig. 4 is a perspective view showing a developed state of the door member and viewed from a lower side

Fig. 5 is a perspective view of the door member in Fig. 4 and viewed from an upper side.

Fig. 6 is a schematic plan view of Embodiment 2 of the invention.

Fig. 7 is a perspective view of a door member in Embodiment 3 of the invention.

Fig. 8 is a perspective view of a door member in Embodiment 4 of the invention.

DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENTS

[0019] Now, a description will be given in more detail of preferred embodiments of the invention with reference to the accompanying drawings.

[Embodiment 1]

[0020] Hereinafter, Embodiment 1 of the invention will be described with reference to an illustrated example.
[0021] Figs. 1 to 4 show Embodiment 1 of the invention

[0022] First, the configuration will be described. As shown in Figs. 1 and 2, an air bag device 3 is disposed in a portion of an instrument panel 2 which is positioned below a front window glass 1 of an automobile, the portion being on the side of the passenger seat. The air bag device 3 is configured by: an air bag module 4 which houses the air bag body (not shown) and is placed inside the instrument panel 2, and which is described later; and a lid portion 5 which forms an inflation opening for allowing the air bag body to be inflated, in a portion of the instrument panel 2. The lid portion 5 is molded integrally with the instrument panel 2. Alternatively, a configuration may be employed in which the lid portion is molded separately from the instrument panel, and then attached to the panel in a subsequent step.

[0023] The instrument panel 2 and the lid portion 5 are configured into a three-layer structure in which a skin 6 made of TEO or the like, a foamed layer 7 made of PU or the like, and a core member 8 made of PPC or the like are integrally formed in this sequence with starting from the surface. Alternatively, the instrument panel 2 and the lid portion 5 may have a single-layer structure formed only by the core member 8, or a multi-layer struc-

ture in which a multi-layer laminated sheet configured by a skin layer, a foamed layer, and a backing layer is bonded to the core member 8. The instrument panel 2 of the three-layer structure is molded by setting the skin 6 and the core member 8 which are previously shaped, into a foaming mold that is not shown, and then injecting and foaming a foaming material constituting the foamed layer 7 between the skin 6 and the core member 8.

[0024] Before the skin 6 is set into the foaming mold, a score groove 9 is previously formed in a portion of the skin 6 which will constitute the lid portion 5. The score groove 9 is configured by portions such as a thinned portion which is processed by thinning with partly leaving the skin 6 in the rear face. The thinned portion is appropriately formed by applying a process such as knife cutting, ultrasonic cutting, or laser cutting on the rear face of the skin 6. In Embodiment 1, the score groove 9 consists of one lateral score groove portion 10 which elongates substantially in the vehicle's width direction, and two longitudinal score groove portions 11 which elongate in parallel in the vehicle's longitudinal direction with respectively passing the ends of the lateral score groove portion 10, so that the score groove has a substantially H-like shape in a plan view. Alternatively, the two longitudinal score groove portions 11 in Embodiment 1 may be omitted so that the score groove 9 has a substantially linear shape in a plan view. In another embodiment, the score groove may be formed into a substantially U-like shape in a plan view.

[0025] Before the core member 8 is set into the foaming mold, a substantially rectangular opening 12 is previously formed in a portion of the core member which will constitute the lid portion 5. A door member 13 which is made of a metal or a resin is attached to the opening 12 via an insert member 15 having plural stud bolts 14, and nuts 46 which are screwed to the stud bolts 14, respectively. In the case where the score groove 9 has a substantially H-like shape or a substantially straight line shape in a plan view, two door members 13 are attached to be arranged in the vehicle's forward and backward direction as shown in the figure. The lateral score groove portion 10 corresponds to an area between open-end sides of the two door members 13, and the two longitudinal score groove portions 11 correspond to areas between both the sides of the door members 13 and both the side edges of the opening 12, respectively. As shown in Fig. 3, each of the door members 13 comprises: an attaching portion 16 serving as a door member fixing end which is to be fixed to the front or rear edge portion of the opening 12 by the stud bolts 14; and a door portion 17 which is to be positioned in the opening 12.

[0026] In the case where the score groove has a substantially U-like shape in a plan view, only one door member 13 is attached. Also in this case, the score groove having a substantially U-like shape in a plan view corresponds to a peripheral edge portion of the door member 13. Alternatively, the attachment of the door

member 13 may be conducted while omitting the insert member 15.

[0027] A reinforcement frame member 18 which is made of a metal or a resin is attached to the rear face of the core member 8 by using the stud bolts 14. Protruding reinforcement pieces 19 and 20 which extend toward the inner side with respect to the instrument panel 2 are formed on a peripheral edge portion of the reinforcement frame member 18 corresponding to the opening 12.

[0028] On the other hand, the air bag module 4 comprises a base member 22 which is made of, for example, a metal, which has a substantially inverted Ω -like shape as seen from a lateral side, and in which a cylindrical inflator 21 can be housed. The base member 22 is fastened and fixed to a vehicle body member 23 such as a steering support member by using fastening members such as bolts which are not shown. The inflator 21 is configured so as to cope with both a conventional operation mode (in which the whole of a predetermined amount of gas is ejected by a single ejecting operation) and a multi-stage operation mode (in which a predetermined amount of gas is stepwise ejected by plural ejecting operations), and also to be selectively set to the conventional operation mode or the multi-stage operation mode.

[0029] The air bag module 4 further includes an air bag container 25 which is made of, for example, a metal. The container is connectedly fixed to an upper portion of the base member 22 by welding or the like. A diffuser opening 24 which communicates with the base member 22 is formed in the bottom of the container. The air bag body is housed in a folded condition in the air bag container 25. The air bag body is fixed to the air bag container 25 via a retainer 26 which is made of a metal, and which is inserted into a gas introducing port of the air bag body, by screwing nuts 28 to retainer bolts 27 that are protruded from the retainer 26.

[0030] Next, a hinge structure which is characteristic of the invention will be described. In the hinge structure in Embodiment 1, a first hinge portion 30 having a flexural rigidity which is smaller than that of a single hinge portion in the conventional art and larger than that of a second hinge portion 32 that will be described later, and the second hinge portion 32 having a flexural rigidity which is smaller than that of the first hinge portion 30, and which is bent in a stage where the inflation pressure of the air bag body is lower than a predetermined value, to cause formation of the inflation opening to be started are formed between the door portion 17 of the door member 13 and the attaching portion 16 where the door member is attached to the air bag lid portion 5.

[0031] Specifically, as shown in Fig. 3 (although only one of the two door members 13 is shown in Fig. 3, also the other door member is configured in the same manner), the first hinge portion 30 and the second hinge portion 32 are disposed in a substantially center position in the vehicle's width direction of the door member 13

which is approximately rectangular. The first hinge portion 30 and the second hinge portion 32 are configured by forming slits 33 which elongate from the both sides to the center portion in the boundary between the door portion 17 and the attaching portion 16.

[0032] The second hinge portion 32 is disposed on the side of the first hinge portion 30 which is on the open end side of the door member 13. The width (twice the dimension B) of the second hinge portion 32 is set to be smaller than the width (the dimension A) of the first hinge portion 30. In order to realize this, as shown in Fig. 3, an oblong hole 34 is formed in the center of the area of the width corresponding to the width (A) of the first hinge portion 30 so as to form two subportions constituting the second hinge portion 32 on both sides of the oblong hole 34. Alternatively, two or more oblong holes 34 may be formed to divide the second hinge portion 32 into three or more subportions.

[0033] Recesses 35 which ensure an axis-to-axis distance C between the hinge axes serving as a large bending length for allowing the first hinge portion 30 to be bent from the second hinge portion 32 are formed in the basal area of the first hinge portion 30 by forming cutaway portions extending from ends of the slits 33 toward the attaching portion 16. Bolt holes 36 through which the stud bolts 14 of the insert member 15 that is disposed adjacently to the attaching portion 16 are to be passed are formed in the attaching portion 16. One bolt hole is formed between the pair of recesses 35, and two bolt holes are formed in each of the side portions with respect to the recesses 35.

[0034] The invention is not restricted to the configuration of Embodiment 1 described above, as far as the flexural rigidity of the second hinge portion 32 is set so that, in the conventional operation mode or the multistage operation mode of the inflator 21, the second hinge portion is bent in a stage where the inflation pressure of the air bag body is lower than a predetermined value, to cause formation of the inflation opening to be started, and the flexural rigidity of the first hinge portion 30 is set so that, in the conventional operation mode of the inflator 21, the first hinge portion is bent after the second hinge portion 32 is bent, to cooperate with the second hinge portion 32 to absorb a predetermined inflation pressure of the air bag body so that the second hinge portion 32 is not broken, and, in the multi-stage operation mode of the inflator 21, the first hinge portion is slightly bent or not substantially bent. For example, the dimensions such as the width and the length, the material, and the like may be adequately changed. A modification such as that the bolt hole 36 between the paired recesses 35 is omitted to enhance the flexural rigidity of the first hinge portion 30 may be appropriately conducted.

[0035] Next, the function of Embodiment 1 will be described.

[0036] When the inflator 21 operates, a high-pressure gas is ejected from the inflator 21, and then introduced

into the air bag body.

[0037] The air bag body is inflated in accordance with the introduction of the high-pressure gas. First, a part of the lid portion 5 is broken to split along the H-like score groove 9 to open the lid portion 5, thereby forming the inflation opening. At the same time, the air bag body is inflated through the inflation opening toward the obliquely rearward side of the vehicle body (toward the passenger in the cabin). As a result, the air bag body receives the head or the like of the passenger sitting in a fixed position on the passenger seat, to protect the head or the like so as not bump against the instrument panel 2, etc.

[0038] In the conventional operation mode of the inflator 21, the second hinge portion 32 is bent in a stage where the inflation pressure of the air bag body is lower than the predetermined value, and the formation of the inflation opening in the air bag lid portion 5 is started. When the inflation pressure of the air bag body then reaches a predetermined higher value, the first hinge portion 30 is bent, and the first hinge portion 30 and the second hinge portion 32 cooperate to form the predetermined inflation opening in the air bag lid portion 5 as shown in Figs. 4 and 5. By contrast, in the multi-stage operation mode of the inflator 21, the second hinge portion is bent by a low inflation pressure of the air bag body in the first gas ejection stage, and the formation of the inflation opening in the air bag lid portion 5 is started. Even when a low inflation pressure of the air bag body in the second gas ejection stage is applied, the first hinge portion 30 is not substantially bent, and a predetermined inflation opening is formed by only the second hinge portion 32.

[Embodiment 2]

[0039] Fig. 6 shows Embodiment 2 of the invention. In the embodiment, the flexural rigidity of a first hinge portion 31 is set by, in place of the bending length C in Embodiment 1, a gradually expanded portion 37 which is expanded in a tapered manner in the lateral width direction of the door member 13.

[0040] The gradually expanded portion 37 may be formed into a step-like shape instead of the tapered shape.

[Embodiment 3]

[0041] Fig. 7 shows Embodiment 3 of the invention. In the embodiment, the weakened portion (in Embodiment 3, plural holes are opened, but the weakened portion in the invention is not restricted to holes, and may be configured by, for example, reducing the thickness of only the side areas of the door member 13, or omitting formation of beads for improving the rigidity on the door member 13, only in the side areas) 39 in the invention are disposed in both the side areas of the door portion 17 of the door member 13.

[0042] According to Embodiment 3 which is configured as described above, when the center area of the door portion 17 is pressed more strongly by the inflated air bag body than the side areas, the door portion 17 is bent in the weakened portions 39 disposed in both the sides of the door portion, whereby stress concentration in the second hinge portion 32 which is in the center area of the door member 13 is relaxed. Therefore, the embodiment is effective in the case where the lateral width of the door portion 17 is particularly large.

[Embodiment 4]

[0043] Fig. 8 shows Embodiment 4 of the invention. In the embodiment, second hinge portions 321 and 322 are formed also in the side areas of the door member 13, respectively, in addition to the second hinge portion 32 disposed in the center area of the door member 13. The second hinge portions 321 and 322 are set to have a width (the dimension D) which is approximately equal to or slightly smaller than the width (the dimension B) of the second hinge portion 32. The reference numerals 341 and 342 denote oblong holes which are similar to the oblong holes 34, and which are formed between the second hinge portions 321 or 322. Alternatively, two or more oblong holes 341 and 342 may be formed to form three or more second hinge portions 321 and 322.

[0044] According to Embodiment 4 of the invention which is configured as described above, even when the center area of the door portion 17 is pressed more strongly by the inflated air bag body than the side areas, the whole of the door portion is caused to perform hinge rotation by the second hinge portions 321 and 322 disposed in both the side areas of the door member 13. Therefore, it is possible to prevent stress from concentrating only in the second hinge portion 32 in the center area of the door member 13. Therefore, the embodiment is effective in the case where the lateral width of the door portion 17 is particularly large.

[0045] As described above, according to the first aspect of the invention, the simple hinge structure can cope with both the conventional operation mode and the multi-stage operation mode of the inflator.

[0046] According to the second aspect of the invention, the axis-to-axis distance between hinge axes of the first and second hinge portions is increased by the recess which is formed in the basal area of the hinge portion, thereby allowing a required flexural rigidity to be ensured in the hinge portion.

[0047] According to the third aspect of the invention, since the first hinge portion is formed into a tapered shape which is inclined toward the side of the door member fixing end as moving from the second hinge portion in the lateral width direction of the door member, it is possible to ensure the flexural rigidity of the first hinge portion by a part in the vehicle's width direction.

[0048] According to the fourth aspect of the invention, since the weakened portion is disposed in both the sides

of the door portion of the door member, stress concentration due to rotation of the door member and in the second hinge portion which is in the center area of the door member can be relaxed.

[0049] According to the fifth aspect of the invention, since the second hinge portion is disposed in each of the center area and both the side areas of the door member, it is possible to attain a practically beneficial effect that stress due to rotation of the door member can be prevented from concentrating only in the second hinge portion which is in the center area.

Claims

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1. A vehicular air bag device, comprising:

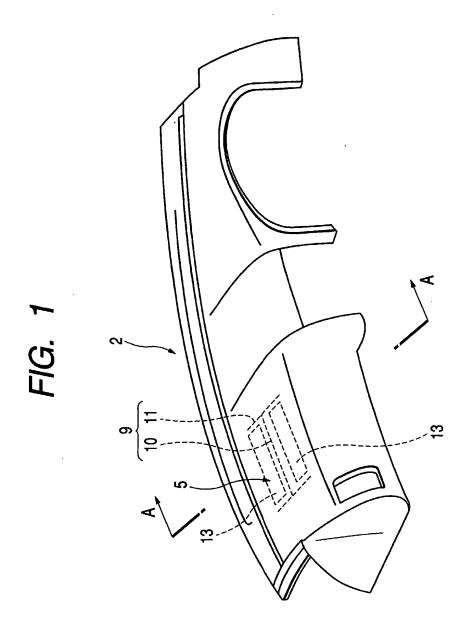
an air bag body;
an air bag lid portion;
a hinge portion; and
a door member disposed on a rear face of said
air bag lid portion and pressed by an inflation
pressure of said air bag body to be swung via
said hinge portion to form an inflation opening
in said air bag lid portion;

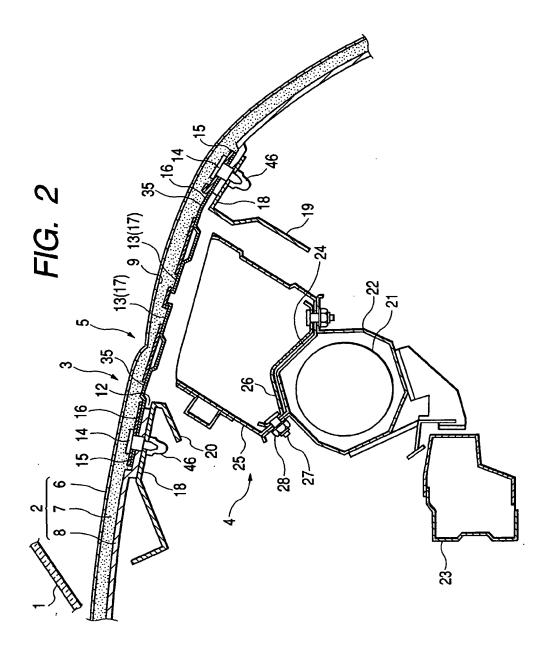
wherein said hinge portion comprises a first hinge portion, and a second hinge portion disposed on a door member open-end side of said first hinge portion; and

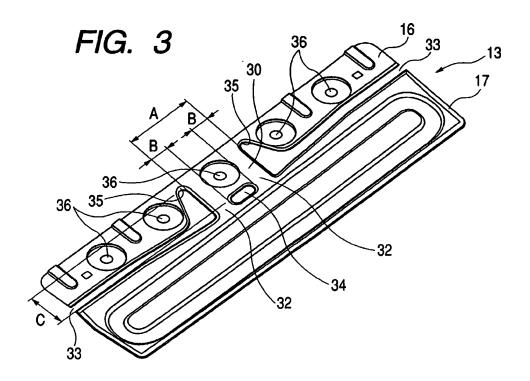
wherein said second hinge portion is bent in a stage where the inflation pressure of said air bag body is lower than a predetermined value to cause formation of said inflation opening to be started.

- The vehicular air bag device according to claim 1, wherein a recess which increases an axis-to-axis distance between hinge axes of said first and second hinge portions is formed in a basal area of said first hinge portion.
- The vehicular air bag device according to claim 1, wherein said first hinge portion is tapered so as to be inclined toward a side of said door member fixing end as moving from said second hinge portion in a lateral width direction of said door member.
- The vehicular air bag device according to claim 1, wherein a weakened portion is disposed in each of both sides of a door portion of said door member.
- The vehicular air bag device according to claim 1, wherein said second hinge portion is disposed in each of a center area and both side areas of said door member.

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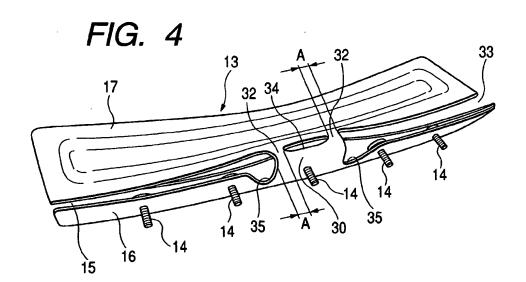


FIG. 5

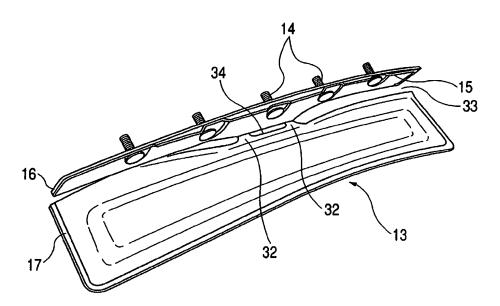
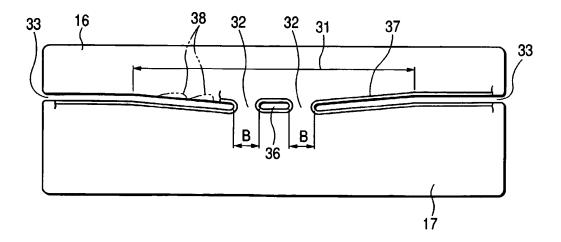
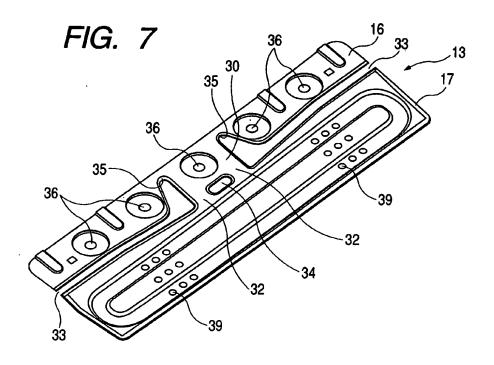
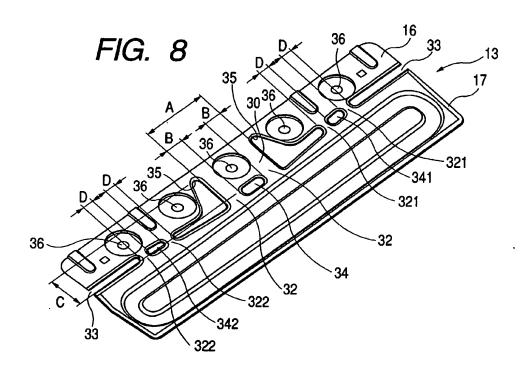


FIG. 6







EP 1 238 872 A1



EUROPEAN SEARCH REPORT

Application Number EP 02 00 4774

		ERED TO BE RELEVANT	Relevant	CLASSIFICATION OF THE
Category	of relevant pass		to claim	APPLICATION (Int.CI.7)
X			1	B60R21/20
A	3; figures 3-6 *		2-5	
X	DE 200 09 378 U (TR 28 September 2000 (* page 4, line 8 - 1-3 *		1	
A	DE 197 35 438 A (VO 18 February 1999 (1 * the whole documen	999-02-18)	1-5	
A	11 July 2000 (2000-	GGE HERBERT ET AL) 07-11) - column 4, line 4;	1-5	
Α	US 5 456 487 A (DAR 10 October 1995 (19 * abstract; figures	95-10-10)	1-5	TECHNICAL FIELDS SEARCHED (Int.Ci.7) B60R
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	The present search report has	been drawn up for all claims	_	<u> </u>
	Place of search	Date of completion of the search	<u></u>	Examiner
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ANNEX TO THE EUROPEAN SEARCH REPORT ON EUROPEAN PATENT APPLICATION NO.

EP 02 00 4774

This annex lists the patent family members relating to the patent documents cited in the above-mentioned European search report. The members are as contained in the European Patent Office EDP file on

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04-06-2002

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For more details about this annex : see Official Journal of the European Patent Office, No. 12/82

and Jackson, but, ultimately lost that business. Plaintiffs argue that Defendants lost the business of Memphis Select because of Defendants' dropping service times and failure to meet the expectations of the facility.

Underwood testified that the medical equipment rental business is extremely competitive, and a business has to fight to keep customers every day.

Defendants, on the other hand, note that individuals at each of these four companies advised Naylor or Underwood that their business would be going away in 2008. Defendants, however, were uncertain as to the identity, customer location, and specific statements made.

Enclosure Beds

During the negotiation of the asset purchase, Defendants decided not to purchase enclosure beds from the Plaintiffs, and, as such, the beds were omitted from the Asset Purchase Agreement. Defendants, however, were aware that the enclosure beds were required to be held as part of the portfolio offered to Naylor's clients. Accordingly, Underwood left the enclosure beds at Naylor's Nashville and Memphis facilities. Underwood testified that Defendants rented these beds with his full consent. Additionally, Underwood testified that the enclosure beds were functional at the time that the sale closed and that spare parts were also left with the beds.

In February 2009, after receiving the Notice Letter, Underwood demanded that Defendants immediately return the enclosure beds and demanded that Defendants pay the full rental rate for the equipment, for a total of \$99,900. Defendants and Underwood had discussed a split revenue-sharing arrangement related to the enclosure beds, under which Plaintiffs would be paid fifty (50) percent of the revenues Defendants received on the beds. Underwood, however, testified that he did not agree to this split revenue-sharing arrangement.

Defendants received approximately \$14,000 in revenue from the rental of the enclosure beds. After some back and forth, Defendants allowed Plaintiffs to retrieve the enclosure beds. Underwood testified that some of the beds had sustained some damage while in Defendants' care.

CONCLUSIONS OF LAW

The Court notes that both parties cite to Tennessee law and do not dispute that the substantive law of Tennessee applies in this matter.

I. Breach of Contract

Plaintiffs allege Defendants breached contractual obligations contained in the Escrow Agreement and the APA. First, Plaintiffs allege that Defendants breached the Escrow Agreement and APA refusing to permit disbursement of the Escrow Funds to Plaintiffs. Second, Plaintiffs allege that Defendant breached the APA because the Defendants were obligated to and did pay a finder's fee to McDaniel.

Under Tennessee common law, "[t]he essential elements of any breach of contract claim include (1) the existence of an enforceable contract, (2) nonperformance amounting to a breach of the contract, and (3) damages caused by the breach of the contract." Additionally, in Tennessee a duty of good faith and fair dealing is imposed in the performance and enforcement of every contract.⁴ The purpose of this implied covenant is "(1) to honor the reasonable expectations of the contracting parties and (2) to protect the rights of the parties to receive the

³ ARC Lifemed, Inc. v. AMC-Tennessee, Inc., 183 S.W.3d 1, 26 (Tenn. Ct. App. 2005).

⁴ Lamar Adver. Co. v. By-Pass Partners, 313 S.W.3d 779, 791 (Tenn. Ct. App. 2009) (citing Wallace v. Nat'l Bank of Commerce, 938 S.W.2d 684, 686 (Tenn. 1996).

benefits of the agreement into which they entered." Importantly, whether a party acted in good faith is a question of fact.⁶

The Court finds that the Defendants breached both of the aforementioned contractual obligations contained in the APA.

a. Breach of the Escrow Agreement and Escrow Provision of the Asset Purchase Agreement

i. Escrow Agreement

As mentioned above, according to Section 3 of the Escrow Agreement, Defendants "may give notice to [Plaintiffs] and Escrow Agent specifying in reasonable detail the nature and dollar amount of any claim it may have under the Purchase Agreement." In Defendants' Notice Letter to Plaintiffs and First Tennessee, Defendants stated that they had "become aware that at least three accounts to which [Plaintiffs were] renting products as of the Closing had previously indicated to [Plaintiffs] that they intended to cease doing business with [Defendants] and these three accounts have since carried out their previously-announced intention" Since that letter, Defendants have argued that five of Naylor's customers have actually either ceased doing business or significantly decreased their business with Defendants soon after closing. These businesses include Select, The Med, Methodist, Kindred and Briley.

To prove this claim, Defendants cite two main pieces of evidence. First, Defendants note that Nunn, an employee of Kindred, testified that he advised Underwood and Dragavon, an employee of Naylor, of Kindred beginning to transition toward using a national contract for

⁵ Lamar Adver. Co., 313 S.W.3d at 791.

⁶ *Id*.

rentals in 2007. Second, Defendants state that Defendants were also told by individuals at Select, The Med, Methodist, and Briley that they had advised Naylor or Underwood that the business would be going away in 2008.

Plaintiffs, however, refute these claims. Plaintiffs show that approximately four months prior to the sale of Naylor, Will, Defendants' employee, knew that Kindred was in the process of changing national accounts and that Nunn was getting pressure to use the national contract. Will even discussed this situation in a series of emails with Underwood and at a meeting with Dragavon and Underwood before Defendants purchased Naylor. Moreover, Plaintiffs highlight the fact that Defendants were and still are uncertain as to the identity, customer location, and the alleged statements made by individuals at Select, The Med, Methodist, and Briley.

The Court found Underwood's testimony to be credible. Underwood testified that the medical equipment rental business is extremely competitive and that a business has to fight to keep customers every day. Underwood noted that it is not unusual in this type of business to lose and gain customers quickly and constantly. Moreover, Defendants provided no evidence that Underwood or Naylor had any prior knowledge that customers would cease doing business after the closing on the asset purchase, with the exception of Kindred potentially having to use a national contract.

Consequently, weighing all of the evidence presented at trial, the Court finds the Defendants breached the duty of good faith and fair dealing imposed in the performance and enforcement of the Escrow Agreement. Defendants did not prove via competent evidence that they had a good faith basis for making this claim against the Escrow Funds and, subsequently, they had no good faith basis for withholding these funds from Underwood for over two years.

ii. Asset Purchase Agreement

Section 7.6 of the APA provides that "[s]eller shall have the right to verify the existence of the unpaid balance of any accounts receivable." Underwood testified that he, through his attorney, attempted to obtain from Defendants a readable spreadsheet for the unpaid accounts receivable as well as the unpaid invoice numbers and invoice dates. And, that, even up to the date of trial, he had not received the requested information to back up the Defendants' claim with respect to unpaid accounts receivable.

Thus, the Court finds that Defendants breached Section 7.6 as Plaintiffs were unable to verify the existence of the unpaid balance of any accounts receivable.

b. Breach of the Brokers and Finders Provisions of the Asset Purchase Agreement

Section 5.2.4 of the APA includes the following representations: (1) that "[n]o broker or finder has acted for Buyer or its Affiliates in connection with this Agreement," and (2) that "no broker or finder retained by Buyer . . . is entitled to any brokerage or finder's fee." Additionally, section 5.2.6 of the APA provides as follows: "No representation or warranty by Buyer in this Agreement . . . contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading." Moreover, according to Black's Law Dictionary, a "finder's fee" is defined as "[t]he amount charged by one who brings together parties for a business opportunity."

Defendants called the \$30,000 payment to McDaniel a "finder's fee" and referenced the payment as such in internal documents. Even McDaniel, Will, and Kinkoph testified via deposition to this \$30,000 payment being a "finder's fee." Moreover, the \$30,000 payment to

McDaniel has all of the characteristics of a "finder's fee" as McDaniel introduced Underwood and Naylor to the Defendants.

Defendants do explain that they called the bonus a "finder's fee" to allow themselves to capitalize the expense in the purchase price and avoid having to expense the cost against the operating income. Defendants also highlight the fact that McDaniel was not happy about taking this \$30,000 lump sum payment. Moreover, Defendants note that Underwood expected McDaniel to be paid a bonus based on growing the revenue of Naylor.

Taking all of these facts into account, the Court finds this payment to be a "finder's fee." Defendants internally referred to the payment as a finder's fee and, importantly, the payment had all of the characteristics of a finder's fee. As such, the Court finds that Defendants breached Sections 5.2.4 and 5.2.6 of the APA.

II. Intentional Misrepresentation and Fraud

Plaintiffs assert that Defendants intentionally misrepresented/fraudulently misrepresented to Plaintiffs that they would not pay a finder's fee to McDaniel as a result of the Defendants purchasing Naylor's assets. Because the Tennessee Supreme Court has noted that the "terms 'intentional misrepresentation,' 'fraudulent misrepresentation' and 'fraud' are synonymous",⁷ this Court will treat these two alleged causes of action collectively.

In Tennessee, to prove a claim based on intentional misrepresentation, a plaintiff must show that:

⁷ Gardner v. Anesthesia & Pain Consultants, P.C., No. E2003-03027-COA-R3-CV, 2004 WL 2715304, at *5 n.1 (Tenn. Ct. App. Nov. 30, 2004) (citing Concrete Spaces, Inc. v. Sender, 2 S.W.3d 901, 904 n.1 (Tenn. 1999)).

(1) the defendant made a representation of an existing or past fact; (2) the representation was false when made; (3) the representation was in regard to a material fact; (4) the false representation was made either knowingly or without belief in its truth or recklessly; (5) plaintiff reasonably relied on the misrepresented material fact; and (6) plaintiff suffered damage as a result of the misrepresentation.⁸

The Tennessee Supreme Court has recently held that "[w]hether a person's reliance on a representation is reasonable generally is a question of fact requiring the consideration of a number of factors." The factors include:

[T]he Plaintiff's sophistication and expertise in the subject matter of the representation, the type of relationship—fiduciary or otherwise—between the parties, the availability of relevant information about the representation, any concealment of the misrepresentation, any opportunity to discover the misrepresentation, which party initiated the transaction, and the specificity of the misrepresentation.¹⁰

The facts in this case have shown that Defendants, in the APA, represented that no finder's fee was paid. As detailed above, this representation was false when made. At the closing of the asset purchase, Defendants signed the APA representing that no finder's fee was paid while simultaneously referring to the \$30,000 payment internally as a finder's fee. The false representation was in regard to a material fact. In fact, Plaintiffs' attorney specifically included the finder's fee provision in the APA. Moreover, at the very least, the false representation was made recklessly as the Defendants internally discussed disclosing McDaniel's finder's fee to Underwood, but ultimately decided not to do so. Underwood vehemently testified that he did rely on this misrepresented fact, and, importantly, he had no opportunity to discover

⁸ Walker v. Sunrise Pontiac-GMC Truck, Inc., 249 S.W.3d 301, 311 (Tenn. 2008).

⁹ Davis v. McGuigan, 325 S.W.3d 149, 158 (Tenn. 2010).

¹⁰ *Id*.

this misrepresentation. As a result, the Plaintiffs sustained damages, which will be discussed below.

Therefore, the Court finds that Defendants intentionally misrepresented to Plaintiffs that they would not pay a finder's fee as a result of the Defendants purchasing Naylor's assets.

III. Conversion Claims

Plaintiffs allege that Defendants converted the enclosure beds owned by Plaintiffs.

Under Tennessee law, conversion "is the appropriation of tangible property to a party's own use in exclusion or defiance of the owner's rights."¹¹ To make out a prima facie case of conversion, a party must prove: "(1) the appropriation of another's property to one's own use and benefit, (2) by the intentional exercise of dominion over it, (3) in defiance of the true owner's rights."¹² In order to constitute conversion, the defendant must intend to convert plaintiff's property.¹³

Underwood testified that the Defendants rented the enclosure beds with his full consent. He also testified that after a bit of back and forth with the Defendants, he was able to retrieve all of the beds. Consequently, Plaintiffs are unable to make out a prima facie case of conversion. Therefore, the Court finds that Defendants did not convert the enclosure beds owned by Plaintiffs.

IV. Violations of the Tennessee Consumer Protection Act

State ex rel. Paula Flowers v. Tennessee Coordinated Care Network, et al., No. M2003-01658-COA-R3-CV, 2005 WL 427990, at *7 (Tenn. Ct. App. Feb. 23, 2005).

¹² *Id*.

¹³ *Thompson v. Thompson*, No. W2008-00489-COA-R3-CV, 2009 WL 637289, at *14 (Tenn. Ct. App. March 12, 2009).

Plaintiffs assert that Defendants representation in the APA that a finder's fee was not paid and the claims Defendant made to First Tennessee violated the TCPA as unfair and deceptive. The TCPA creates a cause of action for "[a]ny person who suffers an ascertainable loss of money or property . . . as a result of the use or employment by another person of an unfair or deceptive act or practice declared to be unlawful by" the TCPA. Specifically, Plaintiffs allege violations of Tennessee Code Annotated ("TCA") section 47-18-104(b)(27) and seek treble damages for these violations. These provisions read as follows:

- (b) . . . the following unfair or deceptive acts or practices affecting the conduct of any trade or commerce are declared to be unlawful and in violation of this part:
 - (27) Engaging in any other act or practice which is deceptive to the consumer or to any other person[.]

According to the Tennessee Supreme Court, the TCPA does not impose a single standard applicable to all cases for determining whether a particular act or practice is deceptive for the purpose of TCA section 47-18-104(b)(27). The Tennessee Supreme Court, however, has defined both "deceptive" and "unfair":

A deceptive act or practice is a material representation, practice or omission likely to mislead a reasonable consumer. An act is unfair if it causes or is likely to cause substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.¹⁶

Moreover, "[t]o be considered deceptive, an act is not necessarily required to be knowing or

¹⁴ Tenn. Code Ann. § 47-18-109(a)(1).

¹⁵ Fayne v. Vincent, 301 S.W.3d 162, 177 (Tenn. 2009).

¹⁶ Davis v. McGuigan, 325 S.W.3d 149, 162 (Tenn. 2010) (citations omitted).

intentional. Negligent misrepresentation may be found to be a violation of" the TCPA.¹⁷

For the reasons this Court set forth above for finding Defendants liable for both the breach of contract claims and the intentional misrepresentation claim, this Court finds that Defendants have violated TCA section 47-18-104(b)(27).

DAMAGES

I. Breach of Contract

With respect to awarding damages for a breach of contract, Tennessee courts have explained that:

The purpose of assessing damages in the event of a breach of contract is to place the injured party in the same position it would have been in had the contract been fully performed. The mere fact a party breaches a contract does not entitle the other party to an award of damages. The injured party must sustain damages that consequently result from the breach. Moreover, the injured party is not entitled to profit from the breach or be placed in a better position than had the contract been fully performed.¹⁸

In this case, Plaintiffs seek damages for both breaches of contract. First, Plaintiffs seek damages in the amount of \$900,000 (the difference between \$3 million and the sales price of Naylor in the amount of \$2.1 million) for the breach of Sections 5.2.4 and 5.2.6 of the APA. Second, Plaintiffs seek the entire balance of the Escrow Fund, \$380,000. In addition, Plaintiffs submit that they are entitled to pre-judgment interest at the statutory rate of ten percent (10%) per annum on entire balance of the Escrow Fund from April 1, 2009 to the date of this judgment and to post judgment interest on the escrow funds at the statutory rate of ten percent (10%) per

¹⁷ Fayne, 301 S.W.3d at 177.

¹⁸ *Metro. Gov't of Nashville & Davidson Cnty. v. Cigna*, 195 S.W.3d 28, 35 (Tenn. Ct. App. 2005) (citations omitted).

annum from the date of this judgment until the funds are paid to Plaintiffs. And, lastly, Plaintiffs assert that, pursuant to Section 8.2 of the APA, they are entitled to their reasonable attorneys' fees incurred in this action.

Defendants, on the other hand, state that Plaintiffs have suffered no damages because they received a more than fair price for Naylor's assets. Additionally, Defendants state that Plaintiffs have suffered no damages from any breach of the APA because Plaintiffs are entitled to the amount held in escrow. Moreover, Defendants argue that Plaintiffs are not entitled to attorneys' fees under the APA or the Escrow Agreement because, based on the plain meaning of the language and common sense understanding of those documents, the parties did not agree to pay each other's fees in the event of a dispute between them.

The Court finds that Plaintiffs have suffered damages pursuant to the breach of Sections 5.2.4 and 5.2.6 of the APA. Underwood testified that had he known McDaniel was receiving a finder's fee, he would not have sold his business for \$2.1 million; instead, he would have changed the purchase price to something higher than \$3 million. Additionally, Underwood testified that had Defendants refused to pay \$3 million for Naylor, Underwood would have continued to operate Naylor at a profit of approximately \$550,000 per year. Moreover, the evidence presented showed that the valuation of Naylor did fluctuate. The Court finds this testimony to be persuasive.

The Court finds Defendants liable for ten percent (10%) of the contract price, \$210,000. Although Plaintiffs seek an award of \$900,000, the Court finds that a number of factors would operate to make such an award unreasonable. These factors include that: Underwood knew McDaniel was consulting for Defendants, Underwood knew McDaniel's compensation was the

bonus or fee based on his growth of Defendants' rental revenue, Underwood expected McDaniel to be paid a bonus based on growing the revenue of Naylor in the event that Defendants purchased Naylor, and Underwood made the final accepted offer at \$2.1185 million.

Consequently, the Court finds \$210,000 to be the reasonable amount of damages incurred by Plaintiff for this breach of contract.

For the breach of the duty of good faith and fair dealing and Section 7.6 of the APA, the Court finds Plaintiffs are entitled to the entire amount being held in Escrow. Defendants claim that Plaintiffs owe \$62,556.83 for the unpaid accounts receivable. Defendants arrive at this number by offsetting the amount of uncollected accounts receivable, \$85,048.83, by the excess net worth, \$22,492.00. Plaintiffs, however, state that the \$85,048.83 amount should be offset by \$37,492.24, which is the number Plaintiffs provide as the excess net worth. The exact amount of excess is important. If Plaintiffs' number is correct, the Plaintiffs do not owe Defendants any money on these unpaid accounts receivable as the claim would not exceed the \$50,000.00 deductible set forth in Section 8.4(b) of the APA.

The Court notes that determining the amount of excess is a close call, but, because Plaintiffs were never able to obtain a readable copy of the unpaid accounts receivable, the Court finds in Plaintiffs' favor. Consequently, Plaintiffs are entitled to the entire amount being held in Escrow.

In addition to the damages sought for the breach of contract claims, as mentioned above, Plaintiffs seek pre-judgment interest on the damage award for the breach of the duty of good faith and fair dealing and Section 7.6 of the APA. Tennessee law provides that prejudgment interest "may be awarded . . . in accordance with the principles of equity at any rate not in excess

of a maximum effective rate of ten percent (10%) per annum." Pre-judgment interest is intended to compensate parties that have been damaged "because they have been deprived of the use of that money from the time they should have received it until the date of judgment"—not to punish the wrongdoer. Moreover, the decision of whether to award pre-judgment interest is left to the "sound discretion" of the trial court. Here, both the amount of the obligation and the specific date of the obligation were certain under the escrow agreement. Additionally, but for this breach, Plaintiffs would have had the use of this money for over two years. Consequently, the Court grants the Plaintiffs request for pre-judgment interest at ten percent (10%) per annum. The pre-judgment interest is awardable from the final disbursement date under the Escrow Agreement, March 31, 2009, to the date of this judgment. The amount of pre-judgment interest is inclusive of the \$5,000 of interest already accrued on the Escrow Funds.

Plaintiffs also seek attorneys' fees on both breach of contract actions. Under Tennessee law, "litigants must pay their own attorneys' fees unless there is a statute or contractual provision providing otherwise." In this case, Section 8.2 of the APA provided:

<u>Indemnification of Buyer</u>. Buyer shall indemnify Seller and Shareholder... against and hold ... harmless from (a) any and all loss, damage, liability or deficiency resulting from or arising out of any inaccuracy in or breach of any representation, warranty, covenant or obligation made or incurred by Buyer herein or in any other agreement, instrument or document delivered by or on behalf of Buyer in connection herewith ... and (c) any and all costs and expenses (including reasonable legal and accounting fees) related to any of the foregoing.

¹⁹ Tenn. Code Ann. § 47-14-123.

²⁰ Scholz v. S.B. Intern., Inc., 40 S.W.3d 78, 82 (Tenn. Ct. App. 2000).

²¹ Myint v. Allstate Ins. Co., 970 S.W.2d 920, 927 (Tenn. 1998).

²² Taylor v. Fezell, 158 S.W.3d 352, 359 (Tenn. 2005).

As Defendants consented to these terms and conditions through their course of dealing,

Plaintiffs' request for attorneys' fees is granted. Plaintiffs shall submit within fifteen (15) days

of the date of this order a motion for attorneys' fees supported by proper documentation.

Defendants shall then have fifteen (15) days following the filing of Plaintiffs' motion to respond.

The Court will then determine the amount of fees to be awarded.

II. Intentional Misrepresentation and Fraud

Plaintiffs seek damages in the amount of \$900,000 (the difference between \$3 million and the sales price of \$2.1 million) for Defendants' intentional misrepresentation of the finder's fee. Plaintiffs are also seeking punitive damages under this claim.

For the intentional misrepresentation of the finder's fee, the Court finds the Defendants liable for ten percent (10%) of the contract price, \$210,000. The Court finds this amount appropriate for the intentional misrepresentation claim for the same reasons mentioned for the breach of Sections 5.2.4 and 5.2.6 of the APA.

As mentioned above, Plaintiffs also seek punitive damages on this claim. Punitive damages are intended to "punish a defendant, to deter him from committing acts of a similar nature, and to make a public example of him." "Punitive damages are thus appropriate only in the most egregious cases and, consequently, a verdict imposing such damages must be supported by clear and convincing evidence that the defendant acted intentionally, fraudulently, maliciously, or recklessly." A person acts recklessly "when the person is aware of, but

²³ Goff v. Elmo Greer & Sons Const. Co., 297 S.W.3d 175, 187 (Tenn. 2009) (quoting Huckeby v. Spangler, 563 S.W.2d 555, 558-59 (Tenn. 1978)).

²⁴ Goff, 297 S.W.3d at 187 (citing Hodges v. S.C. Toof & Co., 833 S.W.2d 896, 901 (Tenn. 1992)).

consciously disregards, a substantial and unjustifiable risk of such a nature that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all of the circumstances."²⁵ Here, the Court finds that Defendants acted recklessly.

Defendants were aware of the finder's fee provision in the APA, Defendants referred to the \$30,000 as a finder's fee internally, Defendants internally discussed potentially disclosing this finder's fee to Underwood, and Defendants consciously disregarded the need to disclose this finder's fee to Underwood despite signing a contract explicitly stating otherwise. This is a gross deviation of the standard of care. An ordinary person would recognized the need to disclose or, better yet, not pay a finder's fee when the payment would explicitly be in violation of the signed contract. Therefore, the Court finds the Plaintiffs are entitled to an award of punitive damages in the amount of \$315,000.

III. Conversion Claims

Although the Court found that Defendants were not liable for Plaintiffs conversion claim, the Court does find that Plaintiffs are entitled to fifty percent (50%) of the \$14,000 in revenue Defendants received. The Court also awards the Plaintiffs \$3,000 for damage to the beds. Therefore, the Court finds Plaintiffs are entitled to \$10,000 for Defendants' use of the enclosure beds. The Court does not find that pre-judgment interest on this award is proper.

IV. Violations of the Tennessee Consumer Protection Act

Upon finding that a party violated the TCPA, the court may award damages as well as reasonable attorneys' fees.²⁶ Here, for the reasons stated above for both breach of contract

²⁵ *Hodges*, 833 S.W.2d at 901.

²⁶ Tenn. Code Ann. § 47-18-109(e)(1).

actions, the Court finds that Plaintiffs are entitled to an award of \$210,000 for the breach of

Sections 5.2.4 and 5.2.6 of the APA, an award of \$380,000 plus pre-judgment interest for the

breach of the Escrow Agreement and Section 7.6 of the APA, and attorneys' fees.

The TCPA goes on to state that, "i[f] the court finds that the use or employment of the

unfair or deceptive act or practice was a willful or knowing violation of this part, the court may

award three (3) times the actual damages sustained and may provide such other relief as it

considers necessary and proper."²⁷ The Court does not find that the evidence supports an award

of treble damages as the Plaintiffs have not shown that the violations of this part were willful or

knowing.

CONCLUSION

Based on the foregoing, the Court enters judgment for the Plaintiffs on the breach of contract

claims, the intentional misrepresentation claim, and the TCPA claim. The Court finds Plaintiffs are

entitled to: \$210,000 for the breach of Sections 5.2.4 and 5.2.6 of the APA; \$380,000 of the Escrow

Funds plus pre-judgment interest (inclusive of the \$5,000 in interest already accrued); \$315,000 in

punitive damages under the intentional misrepresentation claim; and \$10,000 for the enclosure beds.

Duplicative awards are not available. Post judgment interest is mandatory, and will be calculated

at a rate pursuant to 28 U.S.C. § 1961. The Court will award attorneys' fees by separate order.

IT IS SO ORDERED.

s/ S. Thomas Anderson

S. THOMAS ANDERSON

UNITED STATES DISTRICT JUDGE

Date: June 3, 2011.

²⁷ Tenn. Code Ann. § 47-18-109(a)(3).

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